In the Florida Supreme Court

MRI ASSOCIATES OF TAMPA, INC., d.b.a. Park Place MRI,

Petitioner,

vs.

Fla. S. Ct. Case No. SC18-1390

STATE FARM MUTUAL AUTO. INS. CO.,

Fla. 2d DCA Case No. 2D16-4036

Respondent.

_____/

DISCRETIONARY REVIEW OF A DECISION OF THE FLORIDA SECOND DISTRICT COURT OF APPEAL

PETITIONERS' AMENDED INITIAL BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

"[T]here *are* two different methodologies for satisfying the PIP statute's reasonable medical expenses coverage mandate." *See Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc.,* 141 So.3d 147, 156 (Fla. 2013) (emph. in original); *Allstate Ins. Co. v. Orthopedic Specialists*, 212 So.3d 973, 976 (Fla. 2017) (emph. added). The first method is a fact-dependent method, originally adopted in 1971 and currently described in §627.736(5)(a), Fla. Stat. (2012-2018). The second "alternative" method is based on a set of fixed and predetermined fee schedules, was adopted in 2008, and is currently described in §627.736(5)(a)1-5, Fla. Stat. (2012-2018). In *Virtual,* this Court held that PIP insurers must "clearly and unambiguously elect" one method or the other in their policy. *Id.*, 141 So.3d at 156-157. The premise of this election requirement is that the PIP statute establishes "mutually exclusive payment methodologies." *Id.* 141 So.3d at 160 (Canady, J., dissenting). Last year, in *Orthopedic,* this Court followed the same election requirement. *Id.*, 212 So.3d at 976-977.

In this case, Respondent State Farm filed a declaratory judgment action seeking a determination that its policy lawfully elects the fee schedule method (A 2). Petitioner Park Place maintained that State Farm's policy combines the two methods into an unlawful "hybrid" method (A 4, 9). The trial court agreed with Park Place and ruled State Farm's policy does not make a clear and unambiguous

election of the fee schedule method (A 2), as required by *Virtual* and *Orthopedic*.

Despite acknowledging the need for an "election" in the policy (A 6) and that State Farm's policy adopts *both* methods (A 4), the Second District held that *Virtual* and *Orthopedic* did not apply (A 8), that "there are no longer two mutually exclusive methodologies" (A 8-9), and as a result, the insurer "may not disclaim the fact-dependent calculation of reasonable charges" but "it may elect to limit its payment in accordance with the schedule of maximum charges" (A 9). Thus, the Second District concluded a PIP insurer must adopt the fact-dependent method in its policy, but may (at the same time) also rely on the fee schedule method.

In reversing the trial court's judgment, the Second District certified the following question of great public importance:

> DOES THE 2013 PIP STATUTE AS AMENDED PERMIT AN INSURER TO CONDUCT A FACT-DEPENDENT CALCULATION OF REASONABLE CHARGES UNDER SECTION 627.736(5)(a) WHILE ALLOWING THE INSURER TO LIMIT ITS PAYMENT IN ACCORDANCE WITH THE SCHEDULE OF MAXIMUM CHARGES UNDER SECTION 627.736(5)(a)(1)?

(A 10). This timely appeal followed.

SUMMARY OF THE ARGUMENT

The Second District's decision passes on a question certified to be of great public importance, and expressly conflicts with decisions of this Court and other district courts. The issues presented affect all Florida drivers with PIP insurance

and their medical providers. This Court should accept jurisdiction.

ARGUMENT

I. FLORIDA PIP CASE LAW IS DEEPLY DIVIDED, AND PLACES MEDICAL PROVIDERS IN AN UNTENABLE SITUATION

Since 1971, the PIP statute has identified a fact-dependent method for determining the reasonable price that could be collected from a PIP insurer. §627.736(5)(a), Fla. Stat. (1971). However, that fact-dependent method often led to prolonged and costly litigation against insurers (like State Farm) who choose to "go to the mat" over each medical bill. *See State Farm v. Palma*, 555 So.2d 836, 837 (Fla. 1990). While in isolation medical providers appear to be short-changed by small amounts, the cumulative effect of the PIP insurers' underpayments is that they reap billions in unlawful windfall profits.

In 2008, a second method for calculating PIP medical benefits was adopted as an "alternative" that PIP insurers could "elect" in their insurance policies to pay fixed *reduced* rates based on fee schedules[1] to avoid litigating the issue of reasonableness. Instead of avoiding litigation, that fee schedule method has triggered thousands of lawsuits (including class actions) and appeals in Florida

[1] As noted by Justice Pariente, the fee schedule method pays much lower benefits than the fact-dependent method. *Orthopedic*, 212 So.3d at 982 (Pariente, J., dissenting), *citing Geico Indem. Co. v. Physicians Grp., LLC*, 47 So.3d 354, 356 (Fla. 2d DCA 2010); *Allstate Fire & Cas. Ins. Co. v. Stand–Up MRI*, 188 So.3d 1, 3 (Fla. 1st DCA 2015).

and federal courts. Now ten years later, the issue of how and when a PIP insurer is allowed to apply the fee schedules is still hotly litigated in Florida.

In the past few years, it appeared the issue had been resolved by this Court in *Virtual* and again in *Orthopedic*. Those decisions firmly established that the two methods are mutually exclusive, and that a PIP insurer cannot rely on the fee schedule method unless it unambiguously elects it in its policy. On top of that, in 2012, the PIP statute was amended to specifically require PIP insurers to provide "a notice" in their insurance policies of their intent to rely on the fee schedules. *See* §627.736(5)(a)5, Fla. Stat. (2012-2018).

But in the last few months, the stability in the case law has crumbled. In *Progressive Select Ins. Co. v. Florida Hospital Med. Ctr.*, 236 So.3d 1183 (Fla. 5th DCA 2018) (on review in Fla. S. Ct. Case No. SC18-278), the Fifth District held the fee schedule method cannot be applied to medical expenses allocated to the PIP deductible. A few weeks later, the Fourth District certified conflict with the Fifth District and held the fee schedules (and only the fee schedules) must be applied to such charges. *See State Farm v. Care Wellness Ctr., LLC,* 240 So.3d 22 (Fla. 4th DCA 2018) (on review in Fla. S. Ct. Case No. SC18-429). Two months later, the Second District issued its decision here, and concluded that *Virtual* and *Orthopedic* do not apply, and that there are no longer two mutually exclusive methods for calculating PIP medical benefits (A 8-9).

This three-way conflict creates an untenable and chaotic situation. The two different methods have different consequences for the insured and the medical provider. For example, the PIP statute prohibits medical providers from balance-billing their insured patients for amounts lawfully paid using the fee schedule method, but not amounts paid under the fact-dependent method. *See,* §627.736(5)(a)5, Fla. Stat. (2008-2011); §627.736(5)(a)4, Fla. Stat. (2012-2018). If PIP insurers are allowed to use either or both methods and to pick and choose among the elements of both, PIP insureds, their medical providers, and the Courts cannot know how much the PIP insurer must pay, how much the insured patient must pay, and how much the medical provider can collect. Combining the methods returns PIP to the pre-2008 era of litigating the reasonable amount of medical charges—the very result the Legislature adopted the fee schedules to avoid.

II. THE SECOND DISTRICT'S DECISION PASSES ON A QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE

Over the years, Florida's courts have repeatedly rebuffed State Farm's attempts to unlawfully whittle away and provide less than the statutory minimum required amount of insurance benefits.[2] This case is yet another attempt. State

[2] *See, e.g., Mullis v. State Farm*, 252 So.2d 229, 234 (Fla. 1971); *Lee v. State Farm,* 339 So.2d 670 (Fla. 2d DCA 1976); *Butts v. State Farm,* 207 So.2d 73 (Fla. 3d DCA 1968); *Diaz-Hernandez v. State Farm,* 19 So.3d 996 (Fla. 3d DCA 2009); *Saris v. State Farm*, 49 So.3d 815 (Fla. 4th DCA 2010); *State Farm v. Nichols*, 21 So.3d 904 (Fla. 5th DCA 2009).

Farm's "hybrid" method of calculating PIP benefits is the subject of thousands of pending lawsuits across Florida. There are over 90 well-reasoned published and unpublished trial court decisions which hold that State Farm's "hybrid" method is unlawful. Although the 10-page limit for this brief prevents us from citing all of them, some of those decisions recognize that State Farm has used its hybrid method to sometimes pay the precise fee schedule amount, to sometimes pay *more* than the fee schedule amount, and to sometimes pay *less* than the fee schedule amount. *See, e.g., Crespo & Assocs., P.A. v. State Farm,* 24 Fla. L. Weekly Supp. 715a, ¶¶ 28-31 (Fla. Hillsborough County Ct. 2016). This is a serious problem because the fee schedule method is supposed to be "utilized in computing the *minimum* amount" payable by PIP. *Nationwide Mut. Fire Ins. Co. v. AFO Imaging, Inc.,* 71 So.3d 134, 137-138 (Fla. 2d DCA 2011) (emph. added).

The Second District's holding that the two "alternative" methods can now be combined into a single "hybrid" method is unprecedented. Neither State Farm nor Park Place advocated that position. Instead, the Second District arrived at its holding based on its supposition that the Legislature combined the two methods by merely renumbering some of the PIP statute's subsections in 2012 (A 8-9).

But neither the 2012 amendments nor the legislative history supports the Second District's premise. As renumbered, the fact-dependent method is worded the same as before, but appears in (5)(a) instead of (5)(a)1. The renumbering

merely eliminated the prior anomaly of a subparagraph with no text. *See Guidelines for Drafting Legislation*, Fla. House of Rep. House Bill Drafting Service (2014), p. 91 ("Subdividing a section") (*https://bit.ly/2spna7l*). And the fee schedule provisions are now found in (5)(a)1-5, instead of (5)(a)2-5. The 2012 amendments altered none of the material language in the 2008-2011 version of the PIP statute that led this Court to hold that "there *are* two different methodologies." *Virtual*, at 156; *Orthopedic*, at 976. And subparagraphs (5)(a)2, 3, 4, and 5 all have provisions expressly limiting their application to the fee schedules listed in (5)(a)1, further confirming the fee schedule method is distinct and "alternative." No legislative history states or implies any intent to combine the two methods. *See Fla. Sen. Bill Analysis & Fiscal Impact Statement, SB 1860* (Banking & Ins. Comm. Jan. 20, 2012, Feb. 2, 2012, Feb. 24, 2012 and Mar. 2, 2012).

The Second District was correct to certify this case as one of great public importance. State Farm's hybrid method affects thousands of Florida insureds and medical providers, as well as thousands of pending lawsuits involving millions of dollars. The Second District's decision and other district court decisions have made PIP law uncertain and chaotic. This Court should restore stability to the law.

III. THE SECOND DISTRICT'S DECISION EXPRESSLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTIONS OF LAW

The Second District's decision concludes that *Virtual* and *Orthopedic* no

longer apply (A 8). In *Virtual,* this Court reviewed a ***Geico*** insurance policy and explained that its holding "applies only to policies that were in effect from ... January 1, 2008, through the effective date of the 2012 amendment, which was July 1, 2012." *Id.* 141 So.3d at 150. The Court noted these dates were mentioned "***[b]ecause*** the ***GEICO policy*** has since been amended to include an election of the Medicare fee schedules as ***the*** method of calculating reimbursements." *Id.* (emph. added). The July 1, 2012 end date applied to ***Geico's*** non-amended policies. It did not mean that all other PIP insurers could disregard *Virtual*'s reasoning or holdings for policies adopted after July 1, 2012. Indeed, in *Virtual*, this Court reworded the certified question to specifically cover all "PIP POLICIES ISSUED AFTER JANUARY 1, 2008" with no end date. In any event, this Court's decision in *Orthopedic* does not limit its holdings to any particular time period or ending date.

Next, contrary to this Court's prior holdings, the Second District rejected the notion that an insurer's policy must elect the fee schedules in lieu of the fact-dependent reasonable amount method (A 7-8). This position is premised on the Second District's misunderstanding that the "reasonable medical expenses coverage mandate" described in §627.736(1)(a) and the fact-dependent "reasonable" amount method in §627.736(5)(a), are the same thing (A 7-8). In *Virtual* and *Orthopedic*, this Court described the "reasonable medical expenses coverage mandate" as the portion of §627.736(1)(a) that requires all PIP insurance

policies to afford $10,000 of PIP coverage for 80% of reasonable medical expenses, and held that the fact-dependent method and the fee schedule method are two different alternative ways to satisfy that mandate. *See, Virtual*, 141 So.3d at 150 and 155-157; *Orthopedic*, 212 So.3d at 976.

On this point, this Court squarely held that "no insurer can disclaim the PIP statute's *reasonable medical expenses coverage mandate." Orthopedic*, at 977 (emph. added). In direct and express conflict, the Second District held that a PIP insurer "may not disclaim *the fact-dependent calculation of reasonable charges*" (A 9). The Second District incorrectly assumed the reasonable medical expenses coverage *mandate* and the fact-dependent reasonable amount *method* are the same thing. PIP insurers must satisfy the *mandate* by making "a choice" between only one of the two *methods*. *Virtual,* at 157. So, if the fee schedule method is elected, the fact-dependent method must be disclaimed. But the Second District incorrectly concluded both methods can be elected in the same insurance policy (A 7-9).

The Second District's holding that the two alternative methods are no longer mutually exclusive (A 8-9) also expressly and directly conflicts with (a) the Fifth District's *Florida Hospital* decision (fee schedule method cannot be applied to PIP deductible); (b) the Fourth District's *Care Wellness* decision (fee schedule method must be applied to PIP deductible); (c) *NW Center for Integrative Med. & Rehab, Inc. v. State Farm,* 214 So.3d 679, 680 (Fla. 4th DCA 2017) (PIP insurer "may

elect to calculate medical reimbursements in one of two ways"), (d) *Green v. State Farm,* 225 So.3d 229, 230 (Fla. 4th DCA 2017) (insurer "may elect one of two methods" to calculate PIP benefits); (e) *Kaufman v. Mut. of Omaha Ins. Co.*, 681 So.2d 747 (Fla. 3d DCA 1996) (insurance policy impermissibly combined two alternative statutory provisions); and (f) *State Farm v. Nichols*, 21 So.3d 904 (Fla. 5th DCA 2009) (State Farm could not rely on statutory alternative payment limitation which was not adopted in insurance policy).

Finally, the Second District's decision is internally inconsistent. On one hand, the court concluded that *Orthopedic* does not apply and that the two methods are not mutually exclusive (A 8-9). On the other hand, it also concluded that an "election" is "mandatory" and "required" by *Orthopedic* (A 6, 10).

If this Court does not accept jurisdiction, the foregoing irreconcilable conflicts in Florida case law require that PIP disputes must be decided differently in the Second, Fourth, and Fifth Districts. The law must be consistently applied, regardless of venue. This Court should accept jurisdiction and resolve the conflicts.

CONCLUSION

WHEREFORE, Park Place respectfully requests this Honorable Court to accept jurisdiction to review the Second District's decision below, pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(iv) and/or (v).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was **Electronically Filed** with the Clerk of the Court, and **Electronically Served** on Chris W. Altenbernd, Esquire (Email: caltenbernd@bankerlopez.com; service-caltenbernd@bankerlopez.com; amercado @bankerlopez.com), Banker Lopez Gassler, P.A., 501 E. Kennedy Blvd., Suite 1700, Tampa, FL 33602; D. Matthew Allen, Esquire (Email: mallen@cfjblaw.com; ejones@cfjblaw.com), Carlton Fields Jorden Burt, P.A., 4221 West Boy Scout Boulevard, Suite 1000, Tampa, FL 33607; and Marcy Levine Aldrich, Esquire (Email: marcy.aldrich@akerman.com; debra.atkinson@akerman.com), and Nancy A. Copperthwaite, Esquire (nancy.copperthwaite@akerman.com), Akerman LLP, 98 Southeast Seventh Street, Suite 1100, Miami, FL 33131; and Kenneth P. Hazouri, Esquire (Email: kph47@dbksmn.com; Secondary Email: lquezada@dbksmn.com), de Beaubien Knight, Simmons, Mantzaris & Neal, LLP, 332 N. Magnolia Ave., Orlando, FL 32801; on this 4th day of September, 2018.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the text herein is printed in Times New Roman 14-point font, and that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

Respectfully submitted,

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Fla. S. Ct. Case No. SC18-1390

STATE FARM MUTUAL AUTO. INS. CO.,

Fla. 2d DCA Case No. 2D16-4036

Respondent.

_____/

APPENDIX

Opinion of the Florida Second District Court of Appeal

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellant,

v.

MRI ASSOCIATES OF TAMPA, INC., d/b/a PARK PLACE MRI,

Appellee.

Case No. 2D16-4036

Opinion filed May 18, 2018.

Appeal from the Circuit Court for Hillsborough County; Claudia Isom, Judge.

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SLEET, Judge.

State Farm Mutual Automobile Insurance Company appeals the final declaratory judgment denying its motion for summary judgment and entering final judgment in favor of MRI Associates of Tampa, Inc., d/b/a Park Place MRI (Park Place). The circuit court ruled that State Farm's Personal Injury Protection (PIP) policy failed to clearly and unambiguously elect to limit reimbursement payments to the schedule of maximum charges described in section 627.736(5)(a)(1)–(5), Florida Statutes (2013). Because the express language of State Farm's PIP policy does clearly and unambiguously elect to limit reimbursement payments for medical expenses to the schedule of maximum charges, we reverse.

The facts are undisputed in this case. This action arises from nineteen individual PIP claims involving State Farm insureds who were injured in automobile accidents in 2013, received MRIs from Park Place, and subsequently executed assignments of benefits to Park Place. Park Place submitted the bills to State Farm under the insureds' PIP policies, and State Farm paid portions of each of the nineteen bills in accordance with its interpretation of its policy. Park Place disputed the amounts paid by State Farm, and State Farm filed an action seeking a declaration of its rights and obligations under its policy and the PIP statute, section 627.736. Park Place countersued, seeking a declaration of its rights and obligations under the State Farm policy and the PIP statute and an injunction to prevent State Farm from limiting its payments for charges to the schedule of maximum charges.[1]

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[1]In their appellate briefs and at oral argument, the parties also disputed whether the actual payments made by State Farm were in compliance with the schedule of maximum charges limitation. However, by stipulation of the parties, the trial court's summary judgment order was limited to the issue of whether State Farm's policy "lawfully invokes the schedule of maximum charges . . . set forth in section

To calculate the amount payable to Park Place for the MRI charges at issue, State Farm relied on the following language from its policy:

> *We* will pay in accordance with the *No-Fault Act* properly billed and documented *reasonable charges* for *bodily injury* to an *insured* caused by an accident resulting from the ownership, maintenance, or use of a *motor vehicle* as follows:
>
> . . . .
>
> *We* will limit payment of **Medical Expenses** described in the **Insuring Agreement** of this policy's No-Fault Coverage to 80% of a properly billed and documented *reasonable charge*, but in no event will *we* pay more than 80% of the following *No-Fault Act* "schedule of maximum charges" including the use of Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers.

The policy defines a reasonable charge as follows:

> *Reasonable Charge*, which includes reasonable expense, means an amount determined by *us* to be reasonable in accordance with the *No-Fault Act*, considering one or more of the following:
> 1. usual and customary charges;
> 2. payments accepted by the provider;
> 3. reimbursement levels in the community;
> 4. various federal and state medical fee schedules applicable to *motor vehicle* and other insurance coverages;
> 5. the schedule of maximum charges in the *No-Fault Act*[;]
> 6. other information relevant to the reasonableness of the charge for the service, treatment, or supply; or
> 7. Medicare coding policies and payment methodologies of the federal Centers for Medicare and Medicaid Services, including applicable modifiers, if the coding policy or payment methodology does not constitute a utilization limit.

627.736(5)(a)(1)"; therefore, whether the amount actually paid by State Farm complies with the schedule of maximum charges was not before the trial court and is thus outside the scope of our appellate review.

The State Farm policy tracks the method of reimbursement calculation outlined in section 627.736(5)(a)[2] and the limitation set forth in section 627.736(5)(a)(1).[3] State Farm contends that it is authorized under the 2013 PIP statute to limit its maximum payment to eighty percent of the schedule of maximum charges under section 627.736(5)(a)(1). Park Place disagrees, arguing that State Farm must elect either the reasonable charge method of calculation under section 627.736(5)(a) or the schedule of maximum charges method of calculation under section 627.736(5)(a)(1) and that because its policy includes both, State Farm relies on an "unlawful hybrid method" of reimbursement calculation. Park Place contends that because State Farm cannot elect both calculation methods, it must use the reasonable charge method as outlined in the definitions section of its policy and section 627.736(5)(a). We disagree.

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[2]Section 627.736(5)(a) provides:

(5) Charges for treatment of injured persons.--

(a) A physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge the insurer and injured party only a reasonable amount pursuant to this section for the services and supplies rendered . . . . In determining whether a charge for a particular service, treatment, or otherwise is reasonable, consideration may be given to evidence of usual and customary charges and payments accepted by the provider involved in the dispute, reimbursement levels in the community and various federal and state medical fee schedules applicable to motor vehicle and other insurance coverages, and other information relevant to the reasonableness of the reimbursement for the service, treatment, or supply.

[3]Section 627.736(5)(a)(1) provides that "[t]he insurer may limit reimbursement to 80 percent of the . . . schedule of maximum charges."

This court reviews a final summary judgment de novo. Motzenbecker v. State Farm Mut. Auto. Ins. Co., 123 So. 3d 600, 602 (Fla. 2d DCA 2013) (reviewing a ruling on cross-motions for summary judgment where both parties sought declaratory relief); see also Allstate Ins. Co. v. Orthopedic Specialists, 212 So. 3d 973, 975 (Fla. 2017) ("Because the question presented requires this Court to interpret provisions of the Florida Motor Vehicle No-Fault Law—specifically, the PIP statute—as well as to interpret the insurance policy, our standard of review is de novo." (quoting Geico Gen. Ins. Co. v. Virtual Imaging Servs., Inc., 141 So. 3d 147, 152 (Fla. 2013))).

" '[L]egislative intent is the polestar that guides a court's inquiry under the No-Fault Law,' including the PIP statute. 'Such intent is derived primarily from the language of the statute.' " Virtual Imaging, 141 So. 3d at 154 (citation omitted) (quoting Allstate Ins. Co. v. Holy Cross Hosp., Inc., 961 So. 2d 328, 334 (Fla. 2007)).

In 1971 the Florida Legislature enacted the Florida Motor Vehicle No-Fault Law[4] "to provide for medical, surgical, funeral, and disability insurance benefits without regard to fault[] and to require motor vehicle insurance securing such benefits." Id. at 152 (quoting § 627.731, Fla. Stat. (2008)). The mandate that an insurer reimburse a percentage of the reasonable expenses for medically necessary services "is the heart of the PIP statute's coverage requirements." Id. at 155. Under the 2013 version of the PIP statute, an insurer is required to pay the reasonable charges for medically necessary services under section 627.736(5)(a); however, it may elect to limit its payment using the schedule of maximum charges under section 627.736(5)(a)(1). See Virtual Imaging, 141 So. 3d at 150 ("[T]he PIP statute, section 627.736, *requires* the

[4]See §§ 627.730–.7405.

insurer to pay for 'reasonable expenses . . . for medically necessary . . . services' but merely *permits* the insurer to use the Medicare fee schedules as a basis for limiting reimbursements." (citation omitted)). To make this election, the insurer must provide notice to the insured in the policy. § 627.736(5)(a)(5); see also Orthopedic Specialists, 212 So. 3d at 976–77.

In Virtual Imaging, the Florida Supreme Court considered "the effect of the 2008 amendments [to the PIP statute] on an insurer's ability to limit reimbursements" before the legislature enacted the notice requirement in 2012. 141 So. 3d at 154. The 2008 PIP statute contained language similar to the 2013 PIP statute regarding the reasonable charge calculation method and the schedule of maximum charges limitation in subsections (5)(a)(1) and (5)(a)(2), respectively. By placing the reasonable charge method and the fee schedules limitation in two separate but coequal subsections of 627.736(5)(a), the legislature created two distinct reimbursement calculation methodologies. Id. at 156 ("[T]here *are* two different methodologies for calculating reimbursements to satisfy the PIP statute's reasonable medical expenses coverage mandate."). The supreme court held that the statute thus "offered insurers a choice . . . to limit reimbursements based on the Medicare fee schedules or . . . based on the [reasonable charge] factors enumerated in section 627.736(5)(a)(1)." Id. at 157. Relying on the permissive language of section 627.736(5)(a)(2), the supreme court explained that an "insurer must clearly and unambiguously elect the [schedule of maximum charges] payment methodology in order to rely on it." Id. at 158 (citing Kingsway Amigo Ins. Co. v. Ocean Health, Inc., 63 So. 3d 63, 67–68 (Fla. 4th DCA 2011)). Because the insurer's policy made no specific reference to the schedule of

maximum charges, the supreme court ultimately concluded that it could not limit its reimbursement based on those fee schedules. Id. at 160.

In Orthopedic Specialists, the supreme court considered the 2009 version of the PIP statute, which included language identical to the 2008 statute defining the reasonable charge and schedule of maximum charges calculation methodologies in subsections (5)(a)(1) and (5)(a)(2), respectively. Relying on Virtual Imaging, the supreme court reaffirmed that the reasonable charge calculation methodology and the schedule of maximum charges limitation were separate and distinct and that each individually "satisf[ied] the PIP statute's reasonable medical expenses coverage mandate." Orthopedic Specialists, 212 So. 3d at 976. But the supreme court went on to explain that the insurer's "PIP policy cannot contain a statement that the insurer will not pay eighty percent of reasonable charges because no insurer can disclaim the PIP statute's reasonable medical expenses coverage mandate" and that the policy cannot "state that the insurer will calculate benefits solely under the Medicare fee schedules contained within section 627.736(5)(a)(2) because the Medicare fee schedules are not the only applicable mechanism for calculating reimbursements under the permissive payment methodology." Id. at 977 (noting that the schedule of maximum charges outlined in section 627.736(5)(a)(2) contained both Medicare fee schedules and non-Medicare fee schedules). Accordingly, the supreme court expressly rejected the argument urged by Park Place in this appeal, that an insurer's policy must completely disclaim the reasonable charge methodology to elect the schedule of maximum charges limitation. Id. at 975 (rejecting the Fourth District's holding that a "policy must make it inescapably discernable that it will not pay the 'basic' statutorily required coverage

[mandate of eighty percent of reasonable expenses for medically necessary services] and will instead substitute the Medicare fee schedules as the exclusive form of reimbursement" (alteration in original) (quoting Orthopedic Specialists v. Allstate Ins. Co., 177 So. 3d 19, 26 (Fla. 4th DCA 2015))). Because the insurer's policy "clearly and unambiguously state[d] that '[a]ny amounts payable' for medical expense reimbursements 'shall be subject to any and all limitations, authorized by section 627.736, . . . including . . . all fee schedules,' " the supreme court concluded that the policy adequately placed the insured and service providers on notice of the insurer's election of the schedule of maximum charges limitation. Id. at 977–78 (second alteration in original).

Significantly, neither Virtual Imaging nor Orthopedic Specialists applies to policies created after the 2012 amendment to the PIP statute, which the State Farm policy at issue in this case was. See Orthopedic Specialists, 212 So. 3d at 974; Virtual Imaging, 141 So. 3d at 150 ("[O]ur holding applies only to policies that were in effect from the effective date of the 2008 amendments to the PIP statute that first provided for the Medicare fee schedule methodology, which was January 1, 2008, through the effective date of the 2012 amendment, which was July 1, 2012.").

In 2012 the legislature substantially amended section 627.736(5), setting forth the schedule of maximum charges limitation as a subsection of the reasonable charge calculation methodology. Ch. 2012-197, § 10, at 2743–44, Laws of Fla. As a result of this amendment, the reasonable charge and schedule of maximum charges methodologies are no longer coequal subsections of 627.736(5)(a); instead the reasonable charge method is set forth in subsection (5)(a), and the schedule of

maximum charges limitation is provided in subsection (5)(a)(1). Based on the current construction of the PIP statute, we conclude that there are no longer two mutually exclusive methodologies for calculating the reimbursement payment owed by the insurer. See Bd. of Trs., Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120, 126 (Fla. 2016) ("When a statute is amended to change a key term or to delete a provision, 'it is presumed that the Legislature intended it to have a meaning different from that accorded to it before the amendment.' " (quoting Carlile v. Game & Fresh Water Fish Comm'n, 354 So. 2d 362, 364 (Fla.1977))). The 2013 PIP statute includes the fact-dependent calculation of reasonable charges as a part of the definition of "[c]harges for treatment of injured persons" under section 627.736(5)(a). And an insurer may not disclaim the fact-dependent calculation; however, it may elect to limit its payment in accordance with the schedule of maximum charges under subsection (5)(a)(1)(a)–(f). Accordingly, we reject Park Place's argument that State Farm's policy contains an "unlawful hybrid method" of reimbursement calculation and is therefore impermissibly vague. State Farm's inclusion of the statutory factors in its definition of reasonable charges tracks the PIP statute and is not inconsistent with the policy language limiting reimbursement to the schedule of maximum charges.

"Where the language in an insurance contract is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning so as to give effect to the policy as written." Orthopedic Specialists, 212 So. 3d at 975–76 (quoting Washington Nat'l Ins. Corp. v. Ruderman, 117 So. 3d 943, 948 (Fla. 2013)). State Farm's policy clearly and unambiguously states that "in no event will *we* pay more than 80% of the . . . *No-Fault Act* 'schedule of maximum charges.' " The policy also includes

language virtually identical to that of section 627.736(5)(a)(1)(a)–(f), listing verbatim all of the applicable fee schedules that it will use to limit reimbursement. State Farm's policy language is even more clear and unambiguous than that at issue in Orthopedic Specialists, which "state[d] that '[a]ny amounts payable' for medical expense reimbursements 'shall be subject to any and all limitations, authorized by section 627.736, . . . including . . . all fee schedules.' " 212 So. 3d at 977; see also Allstate Indem. Co. v. Markley Chiropractic & Acupuncture, LLC, 226 So. 3d 262, 266 (Fla. 2d DCA 2016), review denied, no. SC16-1100 (Fla. Aug. 4, 2017). Because the State Farm policy includes mandatory language expressly limiting reimbursement for reasonable medical expenses to the schedule of maximum charges set forth in section 627.736(5)(a)(1)(a)–(f), we conclude that it is sufficient to place insureds and service providers on notice as required by section 627.736(5)(a)(5). Accordingly, we reverse the trial court's order granting summary judgment in favor of Park Place, and we certify the following question of great public importance:

> DOES THE 2013 PIP STATUTE AS AMENDED PERMIT AN INSURER TO CONDUCT A FACT-DEPENDENT CALCULATION OF REASONABLE CHARGES UNDER SECTION 627.736(5)(a) WHILE ALLOWING THE INSURER TO LIMIT ITS PAYMENT IN ACCORDANCE WITH THE SCHEDULE OF MAXIMUM CHARGES UNDER SECTION 627.736(5)(a)(1)?

Reversed and remanded for further proceedings consistent with this opinion; question certified.

CASANUEVA and CRENSHAW, JJ., Concur.